

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 793 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to
see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the
judgment ?

4 Whether this case involves a substantial question of law
as to the interpretation of the constitution of India, 1950
or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VALLI INTERNATIONAL THROUGH PARTNER M.M.SINHA

Versus

SINTEX INDUSTRIES LTD. AND OTHERS

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Appearance :

MS ML SHAH, ADDL PUBLIC PROSECUTOR for Respondent No.6.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 06/02/2006

ORAL JUDGMENT

It is a matter of regret that eventhough the matter is pending since

1997, learned advocate for the applicant has not remained present when the matter is called out.

By filing this petition, the applicant, original accused No.3, has prayed for quashing Criminal Complaint No. 2098 o 1996 pending before Judicial Magistrate, First Class, Kalol.

Opponent No.1 herein, Syntex Industries Limited, has filed the aforesaid complaint against the present applicant and four other accused for offences punishable under section 420 and 114 of the Indian Penal Code. The complainant Company is doing business of manufacturing and selling in wholesale textile cloth and other materials. As per the allegations made in paragraph 2 of the complaint, accused No.2, in order to expedite the delivery of the goods, instructed its Delhi Office, which is accused No.3 herein, to send advance payment of Rs.50,000/- so that the goods can be taken in process by the complainant. As per the allegations in the complaint, a cheque of Rs.50,000/- drawn on Bank of India in favour of the complainant was sent to M/s. Trinity Marketing Pvt. Ltd., along with the order. The complainant, on receipt of the said cheque, prepared invoice in favour of the accused No.1 instructing them to open Letter of Credit in the Bank in faovur of the complainant. Accused No.1, as per the instructions of the complainant opened the Letter of Credit account in Nepal Bangladesh Bank Limited in favour of the complainant. It is further alleged in the complaint that as per the talk with accused No.1, the goods were to be sent to the accused No.1 by Truck to Kathmandu Shipping Yardage. The accused No.1 instructed M/s. Trinity Marketing Pvt. Ltd., agent of the complainant Company, to handover the goods to M/s. Single Carrier Corporation which is accused No.4 and the

Ahmedabad Agent of accused No.5. It is also alleged in the complaint that as per instructions, the goods were to be sent by bank through consignment. The said goods were to be sent through accused No.5 to Delhi and thereafter the accused No.5 was to send the said goods to Nepal. As stated in paragraph 3 of the complaint, the goods were sent as per the instructions and the original Lorry Receipt was sent through State Bank of India, Kalol to the Nepal Bangladesh Bank Ltd.

It is further alleged in paragraph 4 of the complaint as under:

“After dispatching the goods through the Transport of Accused No.5, the complainant have negotiated the documents through the State Bank of India, Kalol (N.G.) Branch, but the buyer has not honoured the documents and returned the documents to the complainant's Bankers. The said were received by the Complainant, through heir Bankers. The Complainant, thereafter, have requested the Accused No.5 to re-book the said goods and sent back from Nepal (Kathmandu) to Kalol (N.G.). In spite of that request the accused No. 5 failed to re-book the said goods and sent back from Nepal to Kalol (N.G.). On inquiry, it was found that the Accused No. 5 in conscription with Accused No.1 without honouring the documents from the Bank have delivered goods worth of Rs.5,61,935.00 (Rupees Five Lacs Sixty One Thousand Nine Hundred Thirty Five only). The complainant would not have booked the said goods with the accused if they would not have promised to the Complainant that they would deliver the goods to the Consignee after production of documents and original L/R sent through the Bank. Thus, the accused have committed offence of cheating punishable under Section 420, 114 of I.P.C.”

On the aforesaid complaint, learned Magistrate passed an order of issuance of process against the accused. The said process is challenged

by the accused No. 3 in the present proceedings.

It is averred in the application that even as per the allegations made in the complaint, the ingredients of section 420 are not satisfied as far as the present applicant is concerned. It is further averred in the application that there is nothing in the complaint to show that the applicant has committed any act or omission so as to abate the commission of offence and therefore section 114 is also not attracted as far as the applicant is concerned. It is further averred that the complaint is malafide, vexatious and frivolous as far as the present applicant is concerned and the same is, therefore, required to be quashed and set aside. The applicant has annexed some documents along with the petition.

Learned Additional Public Prosecutor, Ms. M.L. Shah however submitted that role of the applicant -original accused No. 3 is already stated in the complaint. Role of the accused No. 3 is also mentioned in paragraph 2 of the complaint. She further submitted that defence of the applicant cannot be considered at this stage in quashing proceedings as ultimately if as per the evidence collected during the investigation it is found that there is no sufficient material to implicate the accused, the investigating agency may file appropriate report before the Court. It is submitted that as per the allegations in the complaint, offence punishable under section 114 is made out in the complaint.

A bare perusal of the complaint indicates that allegations are made against the applicant as well as other accused. Having gone through the complaint, I am of the view that this is not a case in which this Court

should exercise its inherent powers under section 482 of the Criminal Procedure Code for quashing the complaint. At this stage, the defence of the accused cannot be considered. The Court is not required to make a rigorous inquiry as if it is a regular trial. The applicant can point out appropriate defence in the pending trial. The matter cannot be kept pending simply because the advocate is not present.

Having gone through the compilation of this matter and having heard the learned Additional Public Prosecutor, for the reasons stated above, this Court is of the view that this is not a case in which this Court would like to exercise its inherent powers under section 482 of the Criminal Procedure Code. The application is, therefore, rejected.

Rule discharged. Interim relief vacated. The trial Court is directed to proceed with the case as expeditiously as possible. Writ to be sent forthwith.

[P. B. MAJMUDAR, J.]

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